

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals of the District of Columbia.

OCTOBER TERM, 1915.

No. 2865

272

OLIVER P. M. BROWN AND CHARLES E. TRIBBY,
TRUSTEES, APPELLANTS,

vs.

THE ORIENTAL UNIVERSITY, A CORPORATION.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED AUGUST 23, 1915.

PRINTED AUGUST 31, 1915.



Court of Appeals of the District of Columbia.

OCTOBER TERM, 1915.

No. 2865.

OLIVER P. M. BROWN AND CHARLES E. TRIBBY,
TRUSTEES, APPELLANTS,

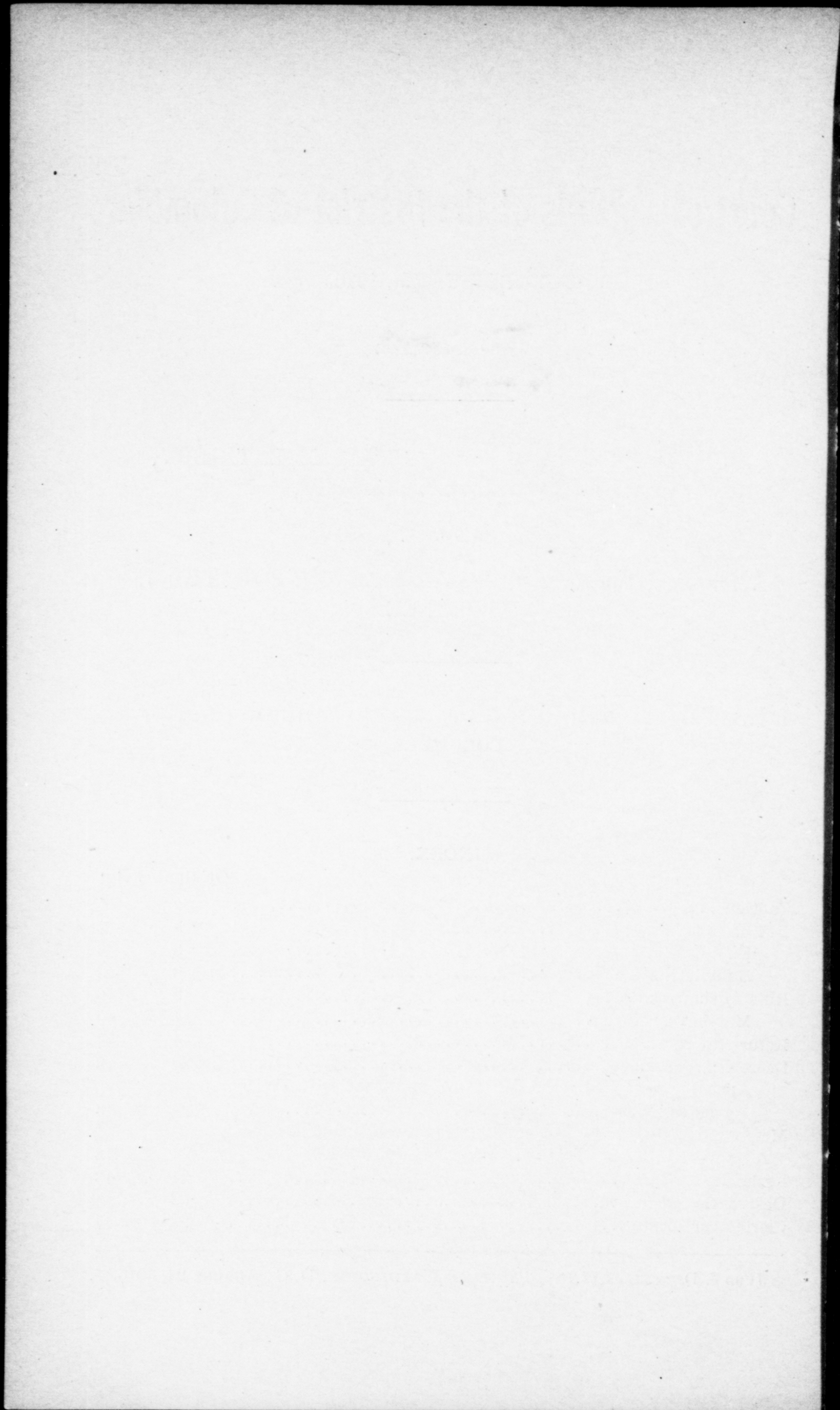
vs.

THE ORIENTAL UNIVERSITY (A CORPORATION),
APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

INDEX.

	Original.	Print
Caption	<i>a</i>	1
Bill of complaint.....	1	1
Exhibit No. 2.....	8	5
Exhibit No. 1.....	9	6
Rule to show cause.....	13	9
Marshal's return	14	9
Return to rule.....	14	9
Decree	20	13
Appeal noted by Oliver P. M. Brown and Charles E. Tribby, trustees.....	21	13
Memoranda: Injunction undertaking approved and filed; bond for appeal to Court of Appeals approved and filed.....	21	13
Assignment of errors.....	21	13
Designation of record.....	22	14
Clerk's certificate	23	14



Court of Appeals of the District of Columbia.

No. 2865.

OLIVER P. M. BROWN et al., Appellants,
vs.
THE ORIENTAL UNIVERSITY, a Corporation.

a Supreme Court of the District of Columbia.

Equity. No. 33601.

THE ORIENTAL UNIVERSITY (a Corporation), Plaintiff,
vs.
OLIVER P. M. BROWN, Trustee; CHARLES E. TRIBBY, Trustee, and
THOMAS H. YEAGER, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill of Complaint.*

Filed Jul- 21, 1915.

In the Supreme Court of the District of Columbia.

Equity. No. 33601.

THE ORIENTAL UNIVERSITY (a Corporation), Plaintiff,
vs.
OLIVER P. M. BROWN, Trustee; CHARLES E. TRIBBY, Trustee, and
THOMAS H. YEAGER, Defendants.

To the Honorable the Justices of the Supreme Court of the District of Columbia, Holding the Equity Court:

The bill of complaint of the Oriental University (a corporation), respectfully represents to the Court as follows:

First. That the plaintiff is a corporation duly created under and by virtue of the laws of the District of Columbia, and is engaged in

the city of Washington, in conducting a University at No. 1400 Chapin Street, Northwest in the city of Washington, in the District of Columbia.

Second. That the defendants Oliver P. M. Brown, Charles E. Tribby and Thomas Yeager are citizens of the United States and residents of the District of Columbia.

Third. That on the 20th day of October, 1913, one Corinne T. Waring, who was at that time the owner of the equity in the premises known as # 1400 Chapin Street, Northwest in the city of Washington, in the District of Columbia; being otherwise known

2 as lot # 141 in Aulick Palmer's subdivision of lots in Craven Terrace, being part of the south grounds of Columbia College, and now known as square No. 2661 executed a second deed of trust upon the said property to the defendants Oliver P. M. Brown and Charles E. Tribby as trustees to secure the note of the said Corinne T. Waring for One Thousand (\$1,000.00) Dollars, bearing date on the said 20th day of October 1913, purporting to secure The Quaker City Investment Company, payable one year after date with interest at the rate of six per cent (6%) per annum. That said deed of trust was recorded in liber 3652 at folio 334 et seq. one of the land records of the District of Columbia a copy of which is annexed to and made part hereof, marked Exhibit No. 1. That the said note is made payable to the Quaker City Investment Company but though search has been made the plaintiff is unable to discover whether there is such a legal entity as the Quaker City Investment Company. The corporation record fails to disclose any such corporation; and plaintiff believes it is only a trade device of the defendants Brown and Tribby in their money lending business to cover up the details of money lending transactions by the said Brown and Tribby and as a cloak for the purpose of concealing identity of parties; but as the facts are within the knowledge of the said defendants Brown and Tribby plaintiff calls upon them in their answer hereto to set out fully and in detail all the facts relating to the said Quaker City Investment Company, if a corporation the place of its incorporation; a copy of its charter the names of its officers and board of directors and its stockholders, and the amount of stock held by each, 3 and if a partnership the names and addresses of all parties interested in it and if a trade device, the names of its parties using the same, and who if any besides the defendants are interested therein and use the said name.

Fourth. That on to-wit the 27th day of April 1914, the said Corinne T. Waring, sold the said property to this plaintiff who assumed the deeds of trust upon the same and executed a further deed of trust to Oliver P. M. Brown trustee, to secure the said Corinne T. Waring in the sum of Six Thousand Two Hundred and Nineteen Dollars and Eighty-eight Cents (\$6,219.88) in twelve notes, dated the 27th day of April 1914, and payable annually, beginning on the first day of May 1915, and ending on the first day of May 1925. That plaintiff assumed the deeds of trust upon the said property, including the deed of trust dated the 20th day of October 1913, and recorded in liber 3652, at folio 334, et seq. to secure The Quaker City Investment Company.

Fifth. That on the 21st day of May 1915, the plaintiff having failed to pay the balance of One Hundred and Thirty (\$130.) Dollars being curtailment agreed upon on said note for One Thousand (\$1,000.00) Dollars, secured by the deed of trust hereinabove referred to but having paid the interest on the same, the said defendants Oliver P. M. Brown and Charles E. Tribby, trustees, offered the said property for sale and claim to have sold the same to the defendant Thomas H. Yeager for a bid of Seven Hundred and Fifty (\$750.) Dollars, being as plaintiff is informed and believes the only bid made for the equity in the property over and above the first trust, upon which was a balance remaining due and unpaid
4 of about Six Thousand (\$6,000.00) Dollars on the first trust; Eight Hundred and Eighty (\$880.00) Dollars upon the second trust; Two Hundred and Twenty-five (\$225.00) Dollars upon the third trust; and Six Thousand One Hundred and eighty-nine Dollars and Eighty-eight Cents (\$6,189.88) being deferred notes in favor of Corinne T. Waring on the fourth trust.

Sixth. That plaintiff further states that no deposit was put up by the said Yeager at the time of the alleged sale by them, although the advertisement of the said sale required a deposit of Two Hundred (\$200.00) Dollars, the alleged reason being that the said Yeager represented the Quaker City Investment Company, the party secured by the deed of trust and at whose request the property was sold, but plaintiff alleges that the deposit was not required of the said Yeager for the reason that he was not a "bona fide" purchaser, but only represented the trustees making the sale and that said sale was not a "bona fide" one. Although the advertisement of the sale gave thirty days in which to complete the sale, nevertheless it had not been completed on the 12th day of July, A. D. 1915, and no deed had been made by the said trustees to the said defendant Yeager.

Seventh. Plaintiff further avers that the said Quaker City Investment Company, if a corporation, or a partnership is owned and controlled by the defendants, Brown and Tribby. That the said Yeager, the alleged purchaser at the said sale, has always been an employee, agent or servant of the defendants, Brown and Tribby, and that in
5 purchasing the said property, he did the same at the request of and in the interest of the said Brown and Tribby, so that the said trustees practically sold the property to themselves, in selling it to an agent, employee or representative of theirs. That plaintiff is advised that inasmuch as the said Thomas H. Yeager was not a "bona fide" purchaser of the said property but was only a representative or agent of the parties making the sale, and as the trustees could not sell to themselves or anyone representing them, the said sale should for that reason be vacated and set aside.

Eighth. Plaintiff further states that the said property is worth at least Fifteen Thousand (\$15,000.00) Dollars, and the price at which the said property was sold was less than one-half of its value, and if the sale is allowed to stand it will work a great hardship or injustice upon this plaintiff and the said Corinne T. Waring, who was the owner of the notes secured by the fourth trust on the property, and for that reason also the said sale should be vacated and set aside.

Ninth. Plaintiff further states that the defendants Oliver P. M. Brown and Charles E. Tribby, on the 29th day of June 1915 instituted landlord and Tenant proceedings under section 20 of the Code to obtain possession of the said property, and on July 17th 1915, judgment for possession of said property was rendered in their favor that plaintiff files herewith the copy of the complaint in said case and prays that the same may be read as part hereof marked Exhibit No. 2.

Wherefore, the premises considered, petitioner prays:

6 First. That the process of subpoena may issue from this Court to the said defendants and each of them, requiring them to be and appear in this Court by a day certain to be named therein; to answer the bill of complaint filed herein and to abide by and perform such decree as may be passed herein.

Second. That the said sale of the said property to the defendant Thomas H. Yeager may be vacated and set aside.

Third. That the defendants, Oliver P. M. Brown and Charles E. Tribby, may be restrained by the order and decree of this Honorable Court from executing and delivering to said Thomas H. Yeager, as a purchaser, any deed conveying the said property to him.

Fourth. That they may be temporarily restrained and enjoined as prayed during the pendency of this suit. That the defendants their agents and attorneys may be restrained and enjoined by the order or decree of this Honorable Court from issuing any process on said judgment in the Landlord and Tenant proceedings and attempting to gain possession of said property, during the pendency of this suit.

Fifth. And that plaintiff may have such other and further relief in the premises, as the nature of this case may require and as to this Honorable Court may seem fit.

THE ORIENTAL UNIVERSITY,
By H. P. HOLLER, *President*.

THOMAS G. LEWIS AND
EDWARD L. GIES,
Att'ys for Plaintiff.

7 DISTRICT OF COLUMBIA, ss:

I do solemnly swear that I am the President of the Oriental University, and have read the foregoing bill by it subscribed and know the contents thereof; that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief, I believe to be true.

H. P. HOLLER.

Subscribed and sworn to before me this 21st day of July, A. D. 1915.

[SEAL.]

WM. F. SALTER,
Notary Public, D. C.

8

Complaint and Summons, Landlord vs. Tenant.

EXHIBIT No. 2.

In the Municipal Court of the District of Columbia.

No. 113,930.

OLIVER P. M. BROWN and CHARLES E. TRIBBY, Trustees, Plaintiff,
vs.

THE ORIENTAL UNIVERSITY, Incorporated, Defendant.

DISTRICT OF COLUMBIA, *To wit:*

Your Complainants Oliver P. M. Brown and Charles E. Tribby Trustees being first duly sworn according to law, states that they are entitled to the possession of the premises No. 1400 Chapin Street, Northwest located in the District of Columbia, and that the same is unlawfully detained from them and held without right by the defendant The Oriental University, Incorporated, whose tenancy and estate has been determined by the service of a due notice to quit. Complainants therefore pray that a summons be issued commanding the defendant to appear and show cause why judgment should not be given against it for the restitution of the possession of said premises, and costs of this suit.

OLIVER P. M. BROWN.
CHARLES E. TRIBBY.

Subscribed and sworn to before me this 28th day of June A. D. 1915.

PAUL V. MITCHELL, [SEAL.]
*Notary Public, D. C.**Summons.*

In the Municipal Court of the District of Columbia.

No. —.

OLIVER P. M. BROWN and CHARLES E. TRIBBY, Trustees, Plaintiff,
vs.

THE ORIENTAL UNIVERSITY, Incorporated, Defendant.

The President of the United States to the Defendant, The Oriental University, Incorporated, Greeting:

You are hereby summoned to appear in this Court on the 12th day of July A. D. 1915, at 10 o'clock A. M., to answer the plaintiff's complaint and show cause why judgment should not be given against you for the restitution of the possession of the premises described in the complaint under oath filed herein by said plaintiffs and costs of this suit.

Witness the Honorable Judges of said Court this Jun- 29 1915
day of —, A. D. 19—.

F. G. AUKAM, *Clerk*,
315 John Marshall Place,
By — —, *Assistant Clerk*.

[On the margin:] 2500—14. 1400 Chapin St.

EXHIBIT No. 1.

This Deed, Made this 20th day of October A. D. 1913 by and between Corrine T. Waring, of the District of Columbia, party of the first part and Oliver P. M. Brown and Charles E. Tribby of the District of Columbia, parties of the second part *parts of the second part*:

Whereas, the said Corrine T. Waring is justly indebted unto Quaker City Investment Company in the full sum of One thousand and no/100 Dollars for money borrowed and in evidence of the said indebtedness the said Corrine T. Waring has made, executed and delivered her certain promissory note of even date herewith, for the sum of one thousand dollars (\$1,000) payable with interest at the rate of six per centum, one year after date, said interest payable semi-annually and at maturity.

And whereas the part- of the first part desire- to secure the prompt payment of said debt, and interest thereon, when and as the same shall become due and payable, and all costs and expenses incurred in respect thereto, including reasonable counsel fees incurred or paid by the said part- of the second part or substituted trustee, or by any person hereby secured, on account of any litigation at law or in equity which may arise in respect to this trust or the property herein, after mentioned, and of all money which may be advanced as provided herein, with interest on all such costs and advances from the date thereof.

Now, Therefore, This Indenture Witnesseth, That the party of the first part in consideration of the premises, and of one dollar, lawful money of the United States of America, to her in
10 hand paid by the parties of the second part, the receipt of which, before the sealing and delivery of these presents, is hereby acknowledged, has granted, and does hereby grant unto the parties of the second part as trustees the following described land and premises, situate in the County of Washington, District of Columbia, known and distinguished as Lot numbered One Hundred and forty-one (141) in Aulick Palmer's Subdivision of part of the "South Grounds of Columbia University" now known a- "Craven Terrace" as per plat recorded in Liber County No. 7 at Folio 39 of the Records of the Office of the Surveyor of the District of Columbia, Subject to the conditions that no spirituous or malt liquor shall ever be sold on said lot, nor any building erected thereon for any injurious purposes trade or manufacturing.

Subject to a prior deed of trust to secure an existing debt of six thousand dollars (\$6,000.00), together with all the improvements

in anywise appertaining, and all the estate, right, title, interest and claim, either at law or in equity, or otherwise however, of the part of the first part, of, in, to, or out of the said land and premises.

In and Upon the Trusts, Nevertheless, hereinafter declared; that is to say in trust to permit said party of the first part her heirs or assigns, to use and occupy the said described land and premises, and the rents, issues and profits thereof to take, have and apply to and for her or their sole use and benefit, until default be made in the payment of the said promissory note hereby secured or any instalment of interest thereon, when and as the same shall become due and payable, or any proper cost or expense in and about the same as hereinafter provided.

And, upon the full payment of all of said note and the interest thereon, and all moneys advanced or expended as herein provided, and all other proper costs, charges, commissions, half-commissions and expenses, at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said party of the first part her heirs or assigns, at her or their cost.

11 And Upon This Further Trust, upon any default or failure being made in the payment of the note or of any instalment of principal or interest thereon, when and as the same shall become due and payable, or upon default being made in the payment, after demand therefore, of any money advanced as herein provided for, or of any proper cost, charge, commission, or expense in and about the same, then and at any time thereafter the said parties of the second part or the survivor of them or the trustee acting in the execution of this trust shall have the power and it shall be their or or his duty thereafter to sell, and in case of any default of any purchaser to resell the said described land and premises at public auction, upon such terms and conditions, in such parcels, at such time and place, and after such previous public advertisement as the parties of the second part, or the survivor or the trustee acting in the execution of this trust, shall deem advantageous and proper; and to convey the same in fee simple, upon compliance with the terms of sale, to, and at the cost of, the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase money; and of the proceeds of said sale or sales: Firstly, to pay all proper costs, charges and expenses, including all fees and costs herein provided for, and all moneys advanced for taxes, insurance, and assessments, with interest thereon as provided herein, and all taxes, general and special, due upon said land and premises at time of sale, and to retain as compensation a commission of 5 per centum on the amount of the said sale or sales; Secondly, to pay whatever may then remain unpaid of said promissory note, whether the same shall be due or not, and the interest thereon to date of payment, it being agreed that said note shall, upon such sale being made before the maturity of said note, be and become immediately due and payable at the election of the holder thereof; and, Lastly, to pay the remainder of said proceeds, if any there be, to said party of the first —, her heirs or assigns, upon the delivery

and surrender to the purchaser, his, her or their heirs or assigns, of possession of the premises so as aforesaid sold and conveyed, less the expense, if any, of obtaining possession.

And the said party of the first part does hereby agree at her own cost, during all the time wherein any part of the matter hereby secured shall be unsettled or unpaid, to keep the said improvements insured against loss by fire in the full sum of One Thousand and no/100 dollars, in the name and to the satisfaction of the part- of the second part, or substituted trustee, in such fire insurance company or companies as the said part- of the second part may select, who shall apply whatever may be received therefrom to the payment of the matter hereby secured, whether due or not, unless the party entitled to receive shall waive the right to have the same so applied; and also to pay all taxes and assessments, both general and special, that may be assessed against, or become due on said land and premises during the continuance of this trust, and that upon any neglect or default to so insure, or to pay taxes and assessments, any party hereby secured may have said improvements insured and pay said taxes and assessments, and the expense thereof shall be a charge hereby secured and bear interest at the rate of six per centum per annum from the time of such payment.

And it is further agreed that if the said property shall be advertised for sale, as herein provided, and not sold, the trustee or trustees acting shall be entitled to one-half the commission above provided, to be computed on the amount of the debt hereby secured.

And the said party of the first part covenant- that she will warrant specially the land and premises hereby conveyed, and that she will execute such further assurances of said land as may be requisite or necessary.

In Witness Whereof, the said party of the first part has hereunto set her hand and seal on the day and year first hereinbefore written.

CORINNE J. WARING.]SEAL.[

Signed, sealed, and delivered in the presence of—
S. A. TERRY.

12

EXHIBIT No. ONE (1).

UNITED STATES OF AMERICA,
District of Columbia, To wit:

I, S. A. Terry a Notary Public in and for the District of Columbia, Do Hereby Certify that Corrine T. Waring party to a certain Deed bearing date on the 20th day of October 1913, and hereto annexed, personally appeared before me in said District the said Corrine T. Waring, being personally well known to me as the person who executed the said Deed, and acknowledged the same to be her act and deed.

Given under my hand and seal this 20th day of October A. D. 1913.

S. A. TERRY,
Notary Public.

13

Rule.

Filed July 21, 1915.

* * * * *

Upon consideration of the bill of complaint of the Oriental University (a corporation) filed herein and the exhibits filed herewith.

It is this 21st day of July, A. D. 1915, by the Court ordered, that the defendants Oliver P. M. Brown and Charles E. Tribby, appear in this Court on Monday the 26th day of July A. D. 1915; at the hour of 9:30 o'clock A. M. and show cause, if any they have, why they, their agents and attorneys should not be restrained and enjoined, during the pendency of this suit, or until the further order of the Court, from executing and delivering to the defendant Thomas H. Yeager a deed for the premises described in the bill of complaint; and also, why they should not be restrained and enjoined, from issuing in the Landlord and tenant proceedings pending against the plaintiff in the Municipal Court of the District of Columbia any proceeds to obtain possession of the said premises from the plaintiff and why they should not be restrained and enjoined from molesting or interfering with him in any manner in the possession of the said premises.

Provided: A copy of this order be served upon the said defendants and each of them on or before the 22nd day of July, A. D. 1915.

By the Court.

J. HARRY COVINGTON,
Chief Justice.

14

(Marshal's Return.)

Served a copy of the within Rule on Oliver O. M. P. Brown, trustee, personally July 21, 1915. On Chas E. Tribby, personally July 21, 1915.

MAURICE SPLAIN, *Marshal.*

Return to Rule.

Filed Jul- 26, 1915.

* * * * *

Defendants Oliver P. M. Brown, and Charles E. Tribby, Trustees for return to rule on them issued herein July 21, 1915, say as follows:

The Oriental University is not such in anything but name, it has no property, capital, credit or assets.

It has no faculty, graduates, curriculum or character, and as a University is a fake pure and simple.

A certain claimed to be Oriental University purchased Lot 141 in Square 2661 April 1914, making the purchase of same through

defendant Brown acting as agent for the owner. At time of purchase it was able to pay, and did pay on the purchase price only \$505.12, and gave its notes for the balance of the purchase price, said notes extended over a period of eleven years and at three per cent interest payable at maturity of each note, and at the time of this purchase it had no money, no assets, no faculty, no
15 students, no course of study, and nothing to lose and did not object to agreeing to pay \$14,000 for said real estate as only \$505.12 was really paid, and the purchase of this property and the operation of this University so called was in the nature of an experiment, and if not successful it would for the time required to determine that, really be paying not much if anything more than rent.

Said purchaser assumed and agreed to pay \$6000 balance due on a first trust, and \$1000 second trust, and \$275 third trust.

At time of sale May 21, 1915, said purchaser was in default since January 1915, in the payment of interest on said \$6,000 first trust, and was more than six months in default on principal of the said \$1,000 second trust, and more than three months in default on \$275 third trust, and on its own \$125.87 promissory note due May 1, 1915, secured by fourth trust, and one year's taxes.

These defendants at the time of the advertisement and sale of which plaintiff complains herein had been notified that the holder of the first trust was about to advertise and sell the property involved herein for default, and holder of second trust was obliged to pay and did pay interest due on first trust amounting to \$195 to prevent sale under first trust, and said second trust holder notified these defendants to sell.

The deed of trust under which sale was made provided that Oriental University should be entitled to possession of said premises until default.

All the above mentioned defaults were made suffered,
16 and permitted by Oriental University, and it was duly notified of said sale, and made no objection, and did not make any bid, and has not since made any bid or offer for the premises, or any excuse for its several defaults, or any offer to make good any of them, and has not done so.

The deed of trust under which these defendants were selling provided that in case of sale they should surrender possession to the purchaser and be entitled to reasonable expenses for securing possession, and Oriental University expressly assumed said trust and is bound by it.

The buyer at said sale May 21, 1915, made no deposit for the reason that he was representing the owner and holder of the second trust and bought the property in for same.

The buyer refused to take a deed and complete the sale unless and until possession be given, and thereupon these defendants brought suit in the Municipal Court in the District of Columbia against plaintiff, to acquire such possession, and plaintiff attended the trial of said suit and did not offer any testimony in its own behalf or make any defense.

Plaintiff herein which was defendant therein has not made a motion for a new trial, has not appealed, and the time for doing that is past, has not removed the case from that court to this on certiorari or attempted so to do, and bill herein does not allege that said decision against plaintiff herein for possession was faulty or erroneous or that plaintiff had or has any defense to said suit for possession, or that there was any error, mistake, or fraud in the trial and decision against it, or that there is any newly discovered evidence, or that the Municipal Court was without jurisdiction, or exceeded its jurisdiction, or alleged any reason justifying an injunction against executing said judgment.

17 Said real estate is not worth \$15,000 as plaintiff alleges. In view of the hard times which have prevailed for the past few years and the business conditions of the District of Columbia which have been made bad by meanwhile action of Congress and the officers of the District and general Government, and in consideration of the fact that times are growing worse and real estate going down in the District of Columbia the price for which the property was sold May 21, 1915, was fair and reasonable, and the said sale was in all respects regular and lawful.

Said real estate is assessed for taxation at \$7,165, and real estate of this class in the District of Columbia is assessed as a rule for more than it will bring at auction, and even for more than it will bring at private sale, and often for more than it is worth.

Plaintiff alleges that the property involved in this litigation was bought May 21, 1915, by defendant Thomas H. Yeager who is made a party hereto and that said property was bought by him as a representative of and for Quaker City Investment Company a Corporation, the party owning and holding the deed of trust under which the sale was made, but plaintiff does not make said corporation a defendant herein, and for that reason alone is not entitled to a preliminary injunction at this time.

It would be wholly inequitable that plaintiff should have the injunction it asks affecting Quaker City Investment Company which is the principal party in interest, but which is not a party hereto.

18 But there is a further reason why the plaintiff is not entitled to the injunction asked, and it is because plaintiff is litigating this same subject matter in Equity cause 33,482 in this court, and all the parties herein are parties therein, and the issues so far as they are concerned are the same, with this only difference that plaintiff in this cause asks to have this court enjoin the execution of said judgment for possession against it, but does not allege a single ground which would justify that.

When the real estate involved herein was purchased by a certain Oriental University it was under a contract in writing therefor which is dated March 25, 1914, and in that contract the Oriental University recites that it is a corporation organized under the laws of the state of Virginia. Copy of said contract is part of answer of this defendant in said Equity Cause 33,482.

The bill herein alleges that plaintiff is a corporation duly incorporated under the laws of the District of Columbia.

A certain Oriental University became a corporation under the laws of the District of Columbia January 5, 1915, and in the papers incorporating said Oriental University, it is recited that it became such by changing the name Eastern University to Oriental University.

Oriental University a corporation under the laws of the District of Columbia which became such by changing name from Eastern

University a corporation, cannot be the same corporation
19 as Oriental University under the laws of Virginia.

Oriental University incorporated January 5, 1915, cannot be the same that bought said real estate as a corporation by said name April 1914, several months before it was incorporated.

Plaintiff Oriental University was not incorporated under the laws of the District of Columbia until January 5, 1915, and that, in the absence of explanation or allegation as to its connection or the connection of said Eastern University with the purchase of this real estate April 1914 by a certain Oriental University incorporated under the laws of Virginia, precludes plaintiff from questioning a sale of said real estate May 21, 1915, under a deed of trust assumed by said Virginia Oriental University.

Plaintiff in the present state of the pleadings herein is not entitled to any relief and a fortiori is not entitled to preliminary injunction.

Defendants respectfully ask that said rule be discharged.

OLIVER P. M. BROWN,
CHARLES E. TRIBBY,
Defendants.

I do solemnly swear that I have read the foregoing petition signed by me and know what it contains, and that the statements therein, I verily believe to be true.

OLIVER P. M. BROWN,
CHARLES E. TRIBBY,
Defendants.

20 Signed and sworn to before me at Washington, D. C.,
July 24, 1915.

PAUL V. MITCHELL,
Notary Public, D. C. [SEAL.]

TRACY L. JEFFORDS,
Attorney for Defendants.

Decree.

Filed Jul- 26th, 1915.

* * * * *

This cause came on to be heard upon the rules issued against the defendants Oliver P. M. Brown and Charles E. Tribby, Trustees, and the returns of the said defendants thereto was argued by counsel and considered by the Court.

It is, thereupon this 26th day of July, 1915, by the Court adjudged, ordered and decreed that the said defendants, their agents and attorneys be, and they hereby are restrained and enjoined, during the pendency of this suit, from issuing execution, or writ of restitution, or any other process, or taking any further proceedings, to obtain possession of premises #1400-Chapin St. N. W., Washington, D. C., on the judgment in the Municipal Court of the District of Columbia, in the case entitled Oliver P. M. Brown and Charles E. Tribby, Trustees, vs. The Oriental University, incorporated No. 113,930 upon said Oriental University complying with the provisions of Equity Rule #41, of the Supreme Court of the District of Columbia.

By the Court.

J. HARRY COVINGTON,
Chief Justice.

21 At time of signing above decree defendants Oliver P. M. Brown and Charles E. Tribby, Trustees, noted an appeal in open court, by attorney and appeal bond for costs is July 26, 1915, at same time fixed by the court at one hundred dollars and fifty dollars may be deposited in this court in lieu of bond.

J. HARRY COVINGTON,
Chief Justice.

Memoranda.

August 2, 1915. Injunction undertaking approved and filed.

August 2, 1915. Bond for Appeal to Court of Appeals approved and filed.

Assignment of Errors.

Filed August 2nd, 1915.

* * * * *

The Trial Court Erred
1. In granting injunction.

T. L. JEFFORDS,
*Attorney for Defendants Brown
and Tribby, Trustees.*

Designation of Record.

Filed August 2, 1915.

* * * * *

Clerk please prepare copy for transcript herein as follows:

1. Bill of Plaintiff and Exhibits.
2. Rule to show Cause.
3. Return to same.
4. Decree granting an injunction and notation on it as to appeal and bond.
5. Memorandum of approval of injunction bond.
6. Memorandum of appeal bond.
7. Assignment of errors.
8. This designation.

T. L. JEFFORDS,
*Attorney for Defendants Brown
 and Tribby, Trustees.*

Agreed to August 2nd, 1915.

THOS. G. LEWIS AND
 EDWARD L. GIES,
Attorneys for Plaintiff.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

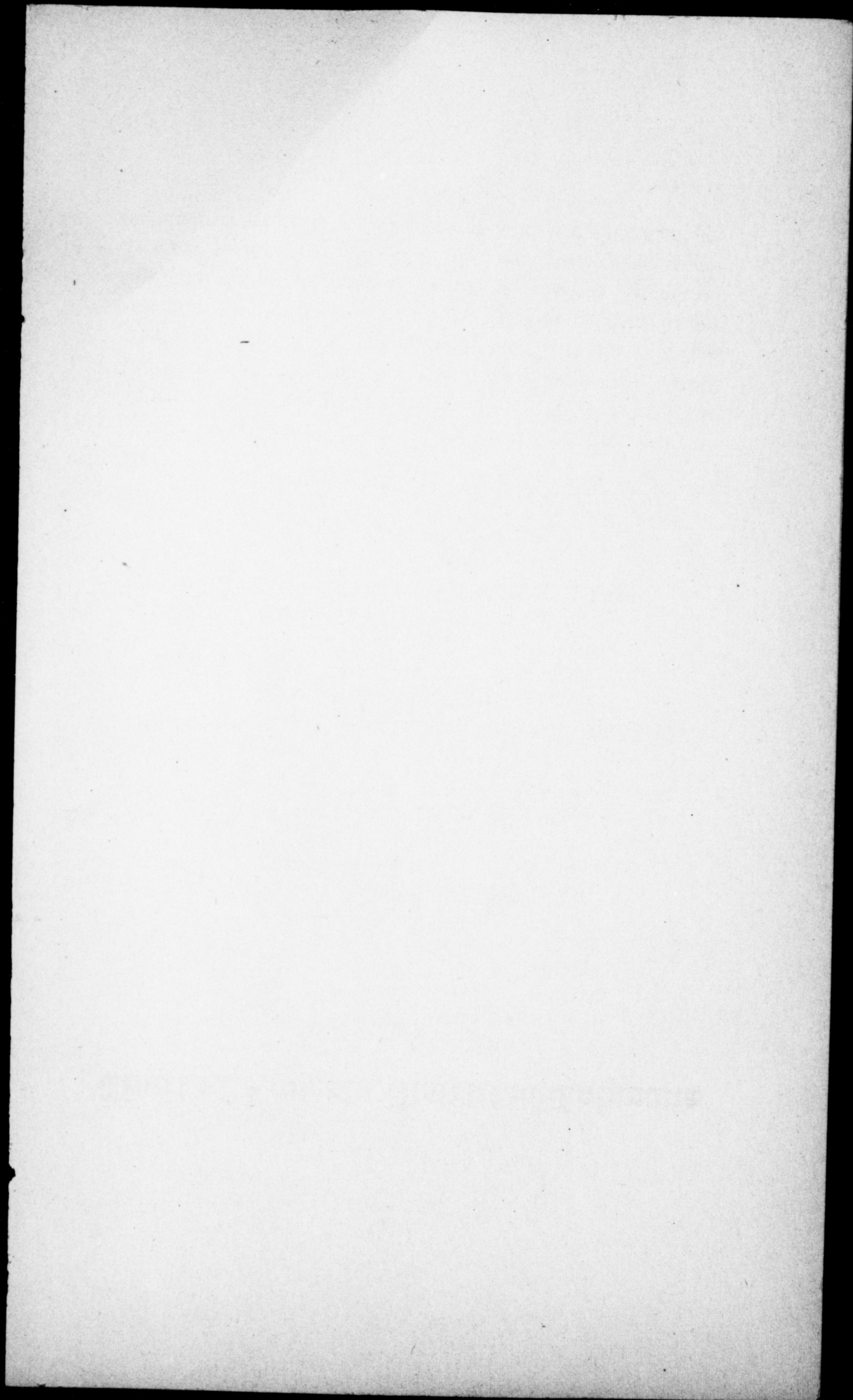
I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 22, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 33601 in Equity, wherein The Oriental University, a corporation, is Plaintiff and Oliver P. M. Brown, Trustee et al. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 12th day of August, 1915.

[Seal Supreme Court of the District of Columbia.]

J. A. YOUNG, *Clerk.*
 By ALF. G. BUHRMAN,
Assistant Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 2865. Oliver P. M. Brown et al., appellants, vs. The Oriental University, a Corporation. Court of Appeals, District of Columbia. Filed Aug. 23, 1915. Henry W. Hodges, Clerk.



COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

SEP-10-1915

Henry W. Hodges.
Deputy Clerk.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1915.

No. 2865.

OLIVER P. M. BROWN AND CHARLES E. TRIBBY,
TRUSTEES, APPELLANTS,

vs.

THE ORIENTAL UNIVERSITY, A CORPORATION.

BRIEF FOR APPELLANTS.

TRACY L. JEFFORDS,
Attorney for Appellants.

THE LAW REPORTER PRINTING COMPANY, WASHINGTON, D. C.



In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1915.

No. 2865.

OLIVER P. M. BROWN AND CHARLES E. TRIBBY,
TRUSTEES, APPELLANTS,

vs.

THE ORIENTAL UNIVERSITY, A CORPORATION.

BRIEF FOR APPELLANTS.

Statement of the Case.

April, 1914 a certain claimed to be Oriental University, a Virginia corporation, bought Lot 141 in square 2661, known as 1400 Chapin Street for \$14,000 and paid \$505 cash.

It took deed to same in which it assumed and agreed to pay a \$6,000 first trust, a \$1,000 second trust, a \$275 third trust, and gave its own fourth trust for \$6,219 on said property payable in yearly notes for eleven years at 3 per cent interest payable at maturity of each note.

January 5, 1915, Eastern University, a District of Columbia corporation, changed its name to Oriental University, the appellee.

May, 1915, there was default on each one of said four trusts, and one year's taxes.

In said \$1,000 second trust appellants were named as trustees and the holder of it requested them to sell as

provided in it, and May 21, 1915, they sold the equity above the first trust of \$6,000 to a representative of and for such holder and for \$750.

Appellee then in possession refused to vacate and the buyer refused to make payment and take deed without possession be given.

Thereupon appellants brought suit against appellee in Municipal Court and judgment was rendered for appellants for possession.

Appellee then brought suit in equity against appellants and the representative who bought said real estate, and alleged that the sale was irregular, without good faith, that appellants were interested as purchasers at the sale, that it was a hardship and prejudice to appellee and to the person from whom said Virginia Corporation bought said property, and that the sale price was inadequate.

Appellee asked that appellants be enjoined from further proceeding in said Municipal Court case, and from giving a deed to buyer, and that the sale be set aside.

Holder of said \$1,000 trust, the trustees personally, and the seller to said Virginia Corporation were not made parties.

On consideration of the bill the trial court issued against appellants a rule and return was made, and on a hearing, the court enjoined appellants from further proceeding in said Municipal Court case, and from that injunction decree this appeal is taken.

Assignment of Errors.

The trial court erred:

1. In granting injunction.

ARGUMENT.

Appellee says it is a District of Columbia corporation. Return to rule shows that it became such January 5, 1915.

There is nothing in the record to show that appellee had or has any connection with Oriental University, the Virginia Corporation which bought said real estate, or with Eastern University which became Oriental University, appellee, January 5, 1915, by changing the corporate name Eastern University to Oriental University.

The record conclusively shows that appellee was in possession of said premises and defendant in Municipal Court, and that it is without interest in said real estate, and a stranger to all the transactions and acts in relation thereto about which it complains.

The Virginia Corporation which bought said real estate assumed the deed of trust under which sale was made and is bound by same. It provides that one holding under it shall be entitled to possession until default, which amounts to saying that after default it shall not have such right.

Also that appellants on making sale shall have the right to secure possession and be allowed reasonable expenses for so doing.

As well under said provisions as those of section 20 of the Code, appellants had the right and were in duty bound to bring said suit for possession, and under either were entitled to prevail.

That section of the Code is as follows:

“Sec. 20. Forcible Entry And Detainer.— Whenever any person shall forcibly enter and detain any building or inclosed real property, or shall unlawfully, but without force, enter and unlawfully and forcibly detain the same, or whenever any tenant shall unlawfully detain possession of the property leased to him, after his tenancy therein

has expired, or any mortgagor or grantor in a mortgage or deed of trust to secure a debt, shall unlawfully detain the possession of the real property conveyed, after a sale thereof under such deed of trust or a foreclosure of the mortgage, or any person claiming under such mortgagor or grantor, after the date of the mortgage or deed of trust, shall so detain the same, or a judgment debtor or any person claiming under him, since the date of the judgment, shall so detain possession of real property, after a sale thereof under an execution issued on such judgment, it shall be lawful for any justice of the peace, on complaint under oath by the person aggrieved by said unlawful detention, to issue a summons to the party complained of to appear and show cause why judgment should not be given against him for the restitution of the possession."

This section provides that the "person aggrieved" may maintain such a suit, and appellants are persons aggrieved.

A fiduciary duty was imposed on appellants by the deed of trust, and they had a direct financial interest to the amount of their commissions as trustees.

An aggrieved person is one who is "damaged, injured, exposed to loss."

Anderson's Law Dictionary, 44.

"One whose rights are concluded or injuriously affected."

1st Ed. Ency. Law, Vol. 1, p. 450.

Definition of aggrieved person in decided cases as a rule refers to the meaning of the words when applied to one whose right to appeal is questioned, while those words in section 20 of the Code are used to designate one who may sue by complaint under oath.

A few cases are cited in which courts have defined aggrieved person.

Rex vs. Essex, 5 Barn. & Cress., 432.

Porter vs. U. S., 2 Paine U. S. C. C., 313.

Betts vs. Shotton, 27 Wis., 670.

Appellants have not found any case in which the words as used in that section of the Code are defined, and so far as advised this is the first case under that section.

To determine the meaning of the words as there used it is helpful to consider the ends sought to be attained.

Before the Code, in a sale like this, when the buyer took a deed and the real estate was occupied by one who would not vacate, the buyer could lawfully get possession only by ejectment which caused delay and cost money.

If purchaser at such sale would not pay and take deed because possession could not be given, it was necessary in order to complete sale to succeed in a suit for specific performance to compel buyer to take deed and pay purchase price, and this caused delay and cost money.

At that time real estate sold in that way would often not bring as much as it was worth and for those reasons.

Certain vacant real estate was sometimes wrongfully entered and possessed by strangers or others, and ejectment was necessary to recover possession.

This section of the Code was intended to cure all these difficulties and afford ready relief to persons aggrieved by any one wrongfully depriving them of possession of real estate in a case covered by that section, and this is such a case.

The principal party in interest is Quaker City Investment Co., the buyer at said sale.

The allegations of bad faith and the like are against that corporation and appellants personally, but not one of them is a party to this suit.

It was inequitable and unfair to grant said injunction without first requiring appellee to make them parties and give them a chance to be heard.

Certainly courts of equity should not permit a plaintiff to make charges in his bill of bad faith and the like against persons who are not parties to the cause, and without hearing them pass on their rights.

But all these allegations if true, which the return denies, are of no consequence, for the record shows conclusively that appellee is not entitled to complain as to same, because a stranger to the issues involved and without any right or rights in or to said real estate or the possession of it.

It is not incumbent on appellants to answer the bill in a return to a rule. It is not incumbent on them, being parties only as trustees named in a deed of trust, to answer at all as to any allegations against Quaker City Investment Company, a corporation, or against these appellees personally as to any interest or ownership in said corporation.

If answer is desired as to allegations against said corporation and these appellants personally, appellee should have made them parties to the bill.

The return says:

“The price for which the property was sold May 21, 1915, was fair and reasonable, and the said sale was in all respects regular and lawful.”

Until further pleading or affidavit or testimony, or admission in open court, that return must stand for exactly what it says. It covers the ground and should prevent injunction.

In a return to rule in such a case as this it is necessary to state only such facts as are requisite to defeat the injunction, and that was done.

West *vs.* Hitchcock, 19 App. D. C., 333, at 347.

Appellee has not made good any of said defaults nor has anyone, or offered to do so, and for that reason alone an equity court should refuse injunction.

One asking equity should do equity.

Appellee does not show or allege that if the sale were set aside, any of said defaults would be made good, or that the real estate would bring more at another sale, or that there would be any bidder or buyer at such sale, or that it is ready to give more for the property than the selling price at said sale.

Should the sale be set aside and the defaults continue there would then exist four separate independent and undeniable rights under said four trusts to forthwith advertise and sell said real estate as sold at said auction sale May 21, 1915.

Courts will not do or order a known useless act.

Return shows that the same subject-matter, between same parties is being litigated in same court in a prior suit there, the only difference being that in this suit injunction is asked against executing said judgment at law of the Municipal Court.

And the injunction is only against executing that judgment for possession, but appellee has not alleged or suggested a single reason why equity should restrain enforcement of it.

If Oriental University, the Virginia Corporation, which purchased said real estate about a year before this sale by appellants for defaults, were the appellee herein, the showing made by the record would not entitle it to this injunction.

Pickford vs. Talbott, 225 U. S., 651, at 658-661.

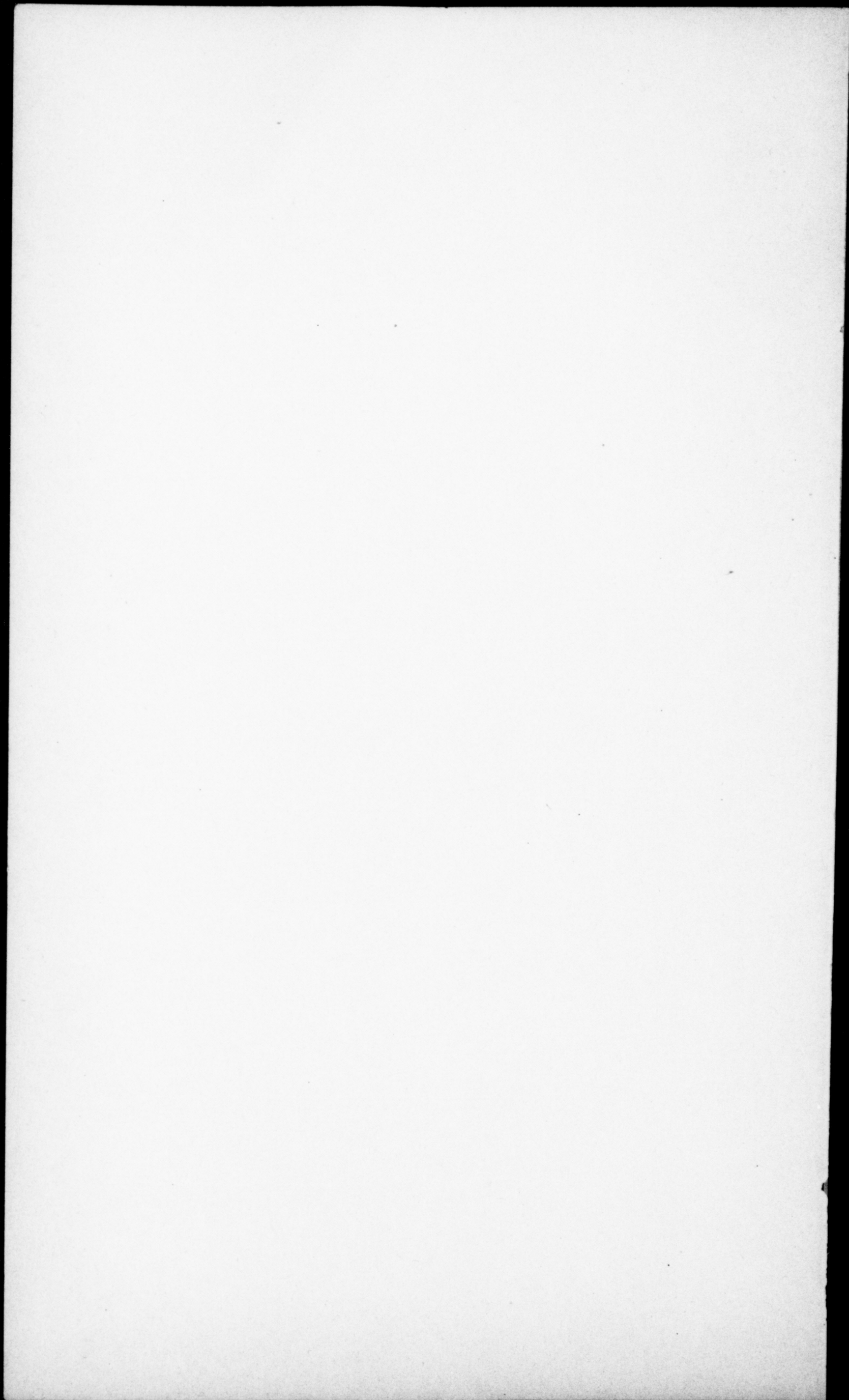
Certainly appellee, which according to the record is a stranger to the issues involved herein and without any

rights in or to said real estate, or possession of it, would not be entitled to injunction.

It is respectfully submitted that the trial court did not have an equitable or other right to grant said injunction and that this court should order it set aside.

TRACY L. JEFFORDS,
Attorney for Appellants.

September, 1915.



IN THE COURT OF APPEALS
DISTRICT OF COLUMBIA
Court of Appeals of the District of Columbia
OCT 2 1915

OCTOBER TERM, 1915

No. 2865.

OLIVER P. M. BROWN and CHARLES E. TRIBBY,
Trustees, Appellants,

vs.

THE ORIENTAL UNIVERSITY (a corporation),
Appellee.

BRIEF FOR APPELLEE.

EDWARD L. GIES,
Attorney for Appellee.



IN THE
Court of Appeals of the District of Columbia

OCTOBER TERM, 1915.

No. 2865.

OLIVER P. M. BROWN and CHARLES E. TRIBBY,
Trustees, *Appellants*,

vs.

THE ORIENTAL UNIVERSITY (a corporation),
Appellee.

BRIEF FOR APPELLEE.

On July 21st, 1915, the Oriental University, a corporation, filed a suit in Equity against the appellants, Oliver P. M. Brown and Charles E. Tribby, trustees, and another party for the purpose of having a sale under a deed of trust, made by the appellants vacated and set aside, and praying among other things that the appellants be restrained and enjoined from issuing any process, by way of writ of restitution or any other process on a judgment in certain landlord and tenant proceedings, which the appellants had instituted for the purpose of obtaining possession of the property in controversy, during the pendency of the suit.

The bill alleges that on the 21st day of May, 1915. the property, No. 1400 Chapin Street, N. W., was offered for sale, under an alleged default in the payment of a trust for One Thousand (\$1,000.00) Dollars, which had been placed upon the property by one Corinne T. Waring. That a sale was attempted and the property was sold to one Thomas H. Yeager for about one-half of the value of the property. It was alleged that the said Yeager was an employee of the trustees, and agent of theirs, and bought the property for them, or for the institution known as the Quaker City Investment Company, which was either an association, partnership or corporation used by appellants, in connection with their business in loaning money and absolutely controlled and owned by them. No deed was ever executed to the said Thomas H. Yeager. However, on the 28th day of June, 1915, the appellants who were the trustees making the said sale, appeared in the Municipal Court of the District of Columbia and instituted summary landlord and tenant proceedings against the plaintiff in this cause, served process upon the officers of the plaintiff corporation, had return of service made against the plaintiff and appellee, and prosecuted a suit against the plaintiff corporation claiming that it, the plaintiff corporation, was unlawfully detaining from them, the trustees under said deed of trust and the appellants herein, and were holding without right the said premises and that they, the trustees under the said deed of trust, and appellants, were entitled to the possession thereof, and on July 17, 1915, judgment was rendered against plaintiff and appellee for the possession of said premises.

A rule to show cause was duly issued in the Supreme Court of the District of Columbia directed to the appellants and requiring them to appear in said Court

on the 26th day of July, 1915, and show cause if any they had, why they should not be restrained and enjoined from issuing any process, to obtain possession of the said premises in the landlord and tenant proceedings instituted by them. The rule came on for hearing before the Chief Justice of the Supreme Court of the District of Columbia, and on the 26th day of July, 1915, the Court granted a temporary injunction against the appellants.

From the order granting the injunction an appeal was taken to this Court.

Argument.

It is to be noted, that the defendants and appellants have not answered the bill, but have filed answer to the rule to show cause. The suggestion as to the lack of a party in the Quaker City Investment Company and as to the corporate character of the plaintiff were not put in issue for that reason. The only questions to be considered are those that were involved in the consideration of the rule to show cause and in the decree *or* of the order of the Court granting an injunction.

First. The main question is, whether the appellants as the trustees under the deed of trust, under which the alleged sale was made, have the right to the possession of the property after the sale, and the right under section 20 of the Code to institute summary landlord and tenant proceedings, to obtain possession. Section 20 of the Code provides, that if * * * any mortgagor or grantor in a mortgage or deed of trust to secure a debt, shall unlawfully detain the possession of the real property conveyed after a sale thereof, under such deed of trust * * * or any person claiming under such mortgagor or grantor, after the date of

the mortgage or deed of trust shall so detain the same.
 * * * It shall be lawful for any Justice of Peace on complaint under oath by the person aggrieved by said unlawful detention to issue a summons to the party complained of to appear and show cause why judgment should not be given against him for the restitution of the possession."

The question in the case is whether the trustees, after having sold the property at a foreclosure sale to an alleged purchaser, were entitled to the possession and whether they are legally the parties aggrieved within the purview of the statute and entitled to institute landlord and tenant proceedings to secure possession.

The Court below held that they were not the party aggrieved and that they were not entitled to the possession. If any person was aggrieved, it was the alleged purchaser at the sale.

The Court very promptly held that the trustees who made the sale and had the title to the property at the time of the sale were not the parties entitled to possession after the sale. The party entitled to possession is the party to whom the title passed at the sale and the party entitled to the possession is consequently the party aggrieved. In this instance, if the sale were "bona fide" and the trustees had made a conveyance of the property to any one, it would have been the third defendant in the case, Thomas H. Yeager. The Court very promptly construed the effort of the trustees to gain possession of the property as being in thorough harmony with the theory of the bill of complaint, viz., that the alleged sale was not a "bona fide" one, but that the appellants were making the sale and in selling to Yeager, an employee, were selling to themselves; and when they claimed to be the parties aggrieved under Section 20 of the Code and sought to obtain pos-

session they were endeavoring to obtain possession for themselves. The record shows that the sale was not a "bona fide" one.

The injunction should be continued until the final hearing of the case, at which time if the appellants establish to the satisfaction of the Court that the sale was a "bona fide" one, that they were not selling to some one representing themselves, and that the consideration for the sale was adequate, the Court could very promptly give possession of the property to the appellants.

Whereas, if the plaintiff should prevail at the final hearing, and the appellants should in the meantime have gotten possession of the property and destroyed the plaintiff's business it would cause irreparable damage to the plaintiff.

Second. The remaining question to be considered is whether the plaintiff and appellee, has stated such a case as entitles it to the relief prayed. The bill alleges that Brown and Tribby are money lenders. That the Quaker City Investment Co. was a trading device for the purpose of concealing the identity of the parties to their money lending transactions, and was either a corporation, partnership or voluntary association owned and controlled by them. This allegation is unanswered in the return to the rule and therefore is to be considered as true.

Again, the bill alleges that no deposit was put up by the alleged purchaser at the time of the pretended sale, although the advertisement required a deposit of Two Hundred (\$200.00) Dollars by the purchaser at the time of sale. It is alleged that the reason why no deposit was required at this alleged sale, was that Yeager represented the Quaker City Investment Company, and in view of the preceding statement, consequently repre-

sented the trustees making the sale, and it was not therefore a bona fide one by the trustees to a third party, but said sale was one by the trustees and appellants, by themselves, to themselves through the intervention of Yeager as a pretended purchaser.

It is further alleged in the seventh paragraph of the bill, which also is unanswered that the said Yeager, the alleged purchaser at the said sale has always been an employee, agent or servant of the appellants, and that in purchasing the said property, he did the same at the request of, and in the interest of the said Brown and Tribby, so that the said trustees in selling the property to their agent, employee or representative, practically sold it to themselves. These allegations are unanswered and therefore must be taken as true, and consequently the allegation of the bill that the sale was not a "bona fide" one, that Yeager was not a "bona fide" purchaser must be taken as true, and the alleged sale vacated and set aside.

This view of the case is further strengthened by the landlord and tenant proceedings referred to in the bill, in which the said appellants attempted by summary landlord and tenant proceedings, under section 20 of the Code, to oust the plaintiff corporation (and not any other corporation or person) from the possession of the property. It was contended by them that under the deed of trust, the trustees were required to obtain possession of the property, and deliver it to the alleged purchaser, but there is nothing in the said deed of trust to warrant this assumption. On the contrary, the deed of trust proceeds upon the assumption that the property, if sold, is to be surrendered to the purchaser after the sale, and said purchaser is to obtain possession of the same at his own expense and cost, and any proceedings, incidental to obtaining posses-

sion are to be instituted by him in person, and the cost thereof, under the provisions of the deed of trust, is to be deducted from any surplus, which remained after the payment of the expenses and secured debt, before it is to be surrendered to the party executing the deed of trust. The landlord and tenant proceedings instituted by the appellant, verify the allegations of the bill of complaint, and show conclusively that the trustees, after making a fictitious sale were attempting to make use of the process of the Court, to obtain possession of the property for themselves and were very properly enjoined from so doing.

It is submitted by counsel for appellee that the appeal should be dismissed at the cost of the appellants.

EDWARD L. GIES,
Attorney for Appellee.